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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,355	07/12/2000	Michael L. O'Banion	0275A0103COF	2199

7590 04/11/2002

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EXAMINER

DEXTER, CLARK F

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/614,355

Applicant(s)

Miller et al.

Examiner

Clark F. Dexter

Art Unit

3724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 25, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10, 11, 14, 15, and 22-26 is/are pending in the application.
- 4a) Of the above, claim(s) 2-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 11, 14, 15, and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 20) ☐ Other: _____

Art Unit: 3724

DETAILED ACTION

1. The amendments filed October 9, 2001 and January 25, 2002 have been entered. It is noted that in view of the new amendment practice under 37 CFR 1.121 which became mandatory for all amendments on March 1, 2001, and due to the limited amount of examining time per application, if the amendment contains changes to existing language that requires a marked-up version showing those changes, the Examiner is relying upon the marked-up version(s) for examination of the application. It is applicant's responsibility to ensure that the clean version(s) is (are) the same as the marked-up version(s). It is further noted that the clean version(s) is (are) considered to be the Official version(s).

Information Disclosure Statement

2. The information disclosure statement filed October 17, 2000 (paper no. 2) has been received and the references listed thereon have been considered.

Claim Rejections - 35 USC § 112

3. Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3724

In claim 10, line 1, "first anti-removal means" is vague and indefinite as to what disclosed structure it refers.

In claim 11, line 1, "second anti-removal means" is vague and indefinite as to what disclosed structure it refers.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, 10, 11, 14, 15 and 22-26 are rejected under the judicially created doctrine of non-statutory double patenting over claims 1-47 of U.S. Patent No. 5,297,463. Although the conflicting claims are not identical, they are directed to the same inventive concept and are not patentably distinct from each other because the subject matter of the application claims is fully disclosed in the patent specification and covered by the patented claims. The patented claims are inclusive for they are drafted using the "comprising-type" format and cover the subject matter of the application claim(s). Since applicant has obtained the right to exclude others from making and

Art Unit: 3724

using the subject matter set forth in the claims of this application by virtue of the patented claims, the issuance of this application into a patent without a terminal disclaimer as provided for under 37 CFR § 1.321(b) would amount to an unjustified extension of this right.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Viazanko, pn 4,798,113.

Regarding claims 22-24, Viazanko discloses a first fixed fence defining a second planar workpiece supporting surface (e.g., 126) and a movable fence defining a third planar workpiece supporting surface (e.g., the upper vertical surface of 144 located above groove through which bolt 154 extends).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

Art Unit: 3724

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 10, 11, 14, 15 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viazanko, pn 4,798,113.

Viazanko discloses a saw with almost every structural limitation of the claimed invention but lacks a fixed clamping means otherwise referred to as a first anti-removal means, a second antiremoval means, a first member, and a second member. However, the Examiner takes Official notice that it is old and well known in the art to provide a clamping means such as a screw or set screw to lock two slidably adjustable components in place with respect to one another. Such clamping means are well known in various arts for securing slidably adjustable components in a desired position with respect to one another. Therefore, it would have been obvious to one having ordinary skill in the art when wanting to prevent the movable fence portion from moving with respect to the fixed fence portion to provide any well known means including clamping means in the form of screws or set screws in the fixed fence portion (e.g., 20) of Viazanko to secure the movable fence portion (e.g., 160) in a desired position.

10. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Viazanko, pn 4,798,113, in view of Novak, pn 3,901,498.

Viazanko discloses a saw with almost every structural limitation of the claimed invention but lacks a fixed clamping means. However, the Examiner takes Official notice that it is old and well known in the art to provide a fixed clamping means such as a screw or set screw to lock two

Art Unit: 3724

slidably adjustable components in place with respect to one another. Such clamping means are well known in various arts for securing slidably adjustable components in a desired position with respect to one another. Therefore, it would have been obvious to one having ordinary skill in the art when wanting to prevent the movable fence portion from moving with respect to the fixed fence portion to provide any well known means including fixed clamping means in the form of screws or set screws in the fixed fence portion (e.g., 20) of Viazanko to secure the movable fence portion (e.g., 160) in a desired position.

Viazanko further lacks a movable clamping means fixedly interconnected with the movable fence portion. However, movable clamping means are old and well known in the art as evidenced by Novak wherein a movable clamping means (e.g., as best shown in Figures 1 and 4) is provided to fix the movable fence portion in place. Therefore, it would have been obvious to one having ordinary skill in the art when wanting to prevent the movable fence portion from moving with respect to the fixed fence portion to provide any well known means including movable clamping means, e.g., in the form of a screw or the like in the movable fence portion (e.g., 144, 160) as taught in Novak to secure the movable fence portion in a desired position.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Monday, Tuesday, Thursday and Friday, and he can be reached during normal business hours on these days.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

Application/Control Number: 09/614,355

Page 7

Art Unit: 3724

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3579; informal/draft papers - (703)305-9835.

A handwritten signature in black ink, appearing to read 'Clark F. Dexter', written in a cursive style.

Clark F. Dexter
Primary Examiner
Art Unit 3724

cf
April 8, 2002